

**DMR ADVISORY COUNCIL MEETING**  
**March 19, 2003, 1:00 p.m.**  
**Minutes**

**1. Welcome**

A meeting of the Department of Marine Resources (DMR) Advisory Council (AC) was held on this date at the DMR office building in Hallowell. Council members who attended the meeting included: Vice Chair Steve Train, Craig Pendleton, Kristin Porter, Elizabeth Sheehan, Bill Sutter, Allyson Jordan and David Pecci. Members Charlton Ames and Lori Howell (via phone) joined the meeting after it started. Department staff included Commissioner Lapointe, Col. Fessenden, Terry Stockwell, Deirdre Gilbert, Sarah Cotnoir, May Costigan and L. Churchill. Other attendees included Susan Jones of Commercial Fisheries News, Jennifer Smith and Julia Herod from Heritage Salmon, Aaron Corr and Tim Sheehan of Gulf of Maine, Inc., Rep. Leila Jane Percy - Popham Beach, lobstermen: Jackson Percy (Zone E), Dana Cutts, Allan Phillips, Wayne Ricker, Illegible name, B. Pennell, Herbert Hendrick, Andy Pennell, Douglas S. E?, George Prince, Roy Knight, Tom Clemons, Stephen Jeeman, Greg Whitmore, Ed Munsey, Jon Munsey, Doug Alexander (Zone F rep), Gary Hawkes (Zone F rep), Mrs. Jeffrey Hurd (Zone F), Arthur Pierce Jr. (Zone F), Samuel E. Burgess III, Thomas W. Gilliam (Zone E), Rick Wallace - Phippsburg (Zone E), Norman Gilliam – Small Point (Zone E), Eric Gilliam – Phippsburg (Zone E), Bret Gilliam – Phippsburg (Zone E), Larry Pye – Phippsburg (Zone E), Maurice Pye – Phippsburg (Zone E) and Carrie Sukar – Phippsburg (Zone E).

Due to the lack of a quorum at the start of the meeting the agenda was taken up out of order.

**4. Regulations - Pending**

**Chapter 26.15(1)(B) Sea Urchin Harvester License Limited Entry System, Exit Ratio definition,**

**Chapter 26.15(2)(B)(C) & (G) Limited Entry Procedures: deadlines, and**

**Chapter 26.15(3)(B)(C) & (D) Issuing the Awarded Licenses**

Commissioner Lapointe briefly reviewed the proposed rulemaking that has an upcoming hearing scheduled for March 28<sup>th</sup> at the Rockland Ferry Terminal Conference Room. A brief discussion on the number of licenses (19) that would be issued with out the rule and with the rulemaking (9) took place. The Commissioner described legislative activity about culling aboard a vessel that the Sea Urchin Zone Council opposes. The laws on urchin licenses are interpreted to allow controlled access not the prevention of, or no access into the fishery, therefore there has to be an entry mechanism.

**Chapters 15 – 20 & 9 Shellfish Sanitation – web info update of drafts**

See: [http://www.state.me.us/dmr/rulemaking/shellfishrules\\_draft/draft\\_rules.htm](http://www.state.me.us/dmr/rulemaking/shellfishrules_draft/draft_rules.htm)

L. Churchill: An introductory presentation on the drafts of Chapter 9 and 15 – 20 were presented at the Fishermen's Forum on March 27<sup>th</sup>. Shellfish dealer workshops to review existing and draft rulemaking proposals are scheduled this week, March 18 and 20<sup>th</sup> in Boothbay Harbor and Ellsworth. Additional meetings are anticipated for dealers unable to attend this week's meetings and for harvesters after the dealer meetings are done. The drafts on the web site have been updated this week. The handout is an outline of all section titles with a brief explanation. Each chapter will start appearing under pending rules for AC members to review in upcoming meetings.

## **5. Report(s):**

**Legislature:** Deirdre Gilbert provided updates on pending legislation. See handout. An LD on the 4-inch scallop ring size was changed to a 4-inch shell size that would be implemented over a 2-year period. This was passed in committee as ought to pass. All lobster bills will be heard on April 7<sup>th</sup> at the Civic Center starting at 1:00 pm. All aquaculture bills will be heard on April 9<sup>th</sup> at the Civic Center starting at 9:00 am. Monday, March 24<sup>th</sup> the committee will focus on Department sponsored bills.

Commissioner Lapointe provided updates on NEFMC and ASMFC.

### **NEFMC:**

- NEFMC met in Rhode Island about 2 weeks ago. Discussion took place on the peer review of the trawl warp and biological review. Need to look at intermediate biomass targets.
- Groundfish: Special meetings are being set for April 15<sup>th</sup> and in May to decide which measures go into the public hearing draft, then to hearing to finalize Amendment 13 in the fall. This is scheduled to be in place by May of 2004. The pace set by the court makes it impossible to have meaningful discussions of a draft that is 1,200-1,500 pages long. We intend to hold public meetings outside the hearing process. Discussion points: incremental steps versus fishing mortality rates; Maine is opposed, Lew made a mistake to move the motion that he voted against but it passed anyway; we can sue but we need basis; reduction in effort is one, persons with only 8 days, latent effort, and how to preserve future effort. We need to take a hard look at the amendment and the council process.
- Today is the herring advisory council meeting in Portland to discuss limited access to the herring fishery; there will be scoping sessions on this and mid water trawl as appropriate gear will be an issue that will come up; now is the time to get consensus into the process. Will there be any changes to general category scallop limits? Commissioner: will check on this item.

### **ASMFC:**

- Striped bass Amendment 6 was approved. ME, NH, NJ, CN voted against the 42% increase commercial quota in the EEZ because they feel it will put Striped Bass into over fished status.
- Lobster: 2 items, Massachusetts agreed to go to zero tolerance on v-notch, which makes the Area 1 plan whole. Also, in Area 2 south of Cape Cod, the collapse there has resulted in an emergency action. They've had a 75 – 80 % reduction. Difficulties: a number of proponents would veneer allocation on top of the quota system and separate conservation from economic gain. Maine fishermen are interested to see how this goes to benefit from their experience. Discussion points: B. Sutter explained that a scientist from Bigelow studying the collapse found a paramoeba that affects both lobsters and urchins. Comm. Lapointe: our pathologist has also been working on these types of problems for some time. The water temperatures in that area have increased significantly and a recent report is now available however, the report could not point to any one particular reason for the collapse. S. Train: Area 2 was better off than we were and now the law requires them to reduce mortality in a set time frame. Comm. Lapointe: They went from 16 to 4 million pounds in 4 years or 25% of what they were. C. Pendleton: NMFS removed the haddock trip limits until the TAC is caught.

## **7. Other Business**

### **Whale update:**

Terry Stockwell provided a handout on the proposed Atlantic Large Whale Take Reduction Program lobster management options at this time. Since the potential biological reduction is zero there is a high alert due the number of whale deaths that have occurred. NMFS will hold a meeting at the end

of April in Providence. There is a working group being put together to tell the take reduction team what will work. Last year the workshop report was laughed at yet somehow those options are showing up this year as their ideas.

Discussion: Lengthening and shortening ropes? T. Stockwell: They are working on sandy bottoms south of the Cape. Mike Myrick and I are working on exemptions for the in shore bays. We hope to winnow the list of requirements down to keep it operational and reduce risk to whales. Bret Gilliam from the audience thanked Terry for his efforts on this matter. T. Stockwell: During the study this summer you're all welcome to come aboard and we will take a look at your gear for you. C.

Pendleton: How much weight is given to taking proactive measures? T. Stockwell: There is a pilot program on the Cape funded at 2.5 million. The biggest issue is cleanliness of the rope; a little early but a good idea. C. Pendleton: Have we looked into other industries to combine with this to reduce the impact of the new rope requirements? Comm. Lapointe: We will follow up on this as the DEP has a big push on material.

### **3. Regulations - Action**

#### **Chapter 11.20(B) Kittery Area – Season**

Vice Chair Steve Train asked for questions or discussion on this item previously covered at several prior meetings. K. Porter asked for a review and T. Stockwell gave a brief history. See previous minutes and handout.

#### ***Motion: (L. Howell, D. Pecci) Motion to approve.***

*Discussion: K. Porter: This doesn't work. It concentrates too much effort in one area that we've tried to eliminate by removing staggered opening dates over the past several years. C. Pendleton: Agree and it adds pressure to stocks in that area. B. Sutter: If the real problem is in the Pisquataqua River this is no good. S. Train: Shouldn't pit harvester groups against each other. K. Porter: Gear conflict drove this similar issue in our area. Audience: Several lobster fishermen spoke to the cost of gear lost to scallops draggers from the mid-coast, Owls Head area over the last few seasons. C. Pendleton: Could the rule be changed to reduce the area to just the river and sunset after one year? Comm. Lapointe: Such changes at this point would be legally considered substantive changes and would require additional rulemaking. T. Stockwell pointed out that during the first rulemaking proposal divers submitted comments that indicated they were not part of the problem so we went back out to rulemaking to accommodate those concerns that were expressed at the first hearing. L. Howell: The recreational divers felt that they were not contributing to this problem and expressed concerns about safety as December would be the only month they can dive safely.*

***Motion continued: Affirmative votes: L. Howell, D. Pecci; Non-affirmative votes: A. Jordan, B. Sutter, E. Sheehan, K. Porter, C. Pendleton, Vice Chair S. Train. The council voted not to approve the proposed rulemaking for Chapter 11.20(B) Kittery Area Season.***

#### **Chapter 25.94(2)(e) Lobster Management Zones, Zone E, and Chapter 25.94(2)(f) Lobster Management Zones, Zone F**

Vice Chair Steve Train asked for questions or discussion on this item previously covered at several prior meetings. T. Stockwell gave a brief history. See previous minutes and handout.

Discussion highlights: Lobster fishermen must follow the most restrictive trap limit for each of the zone they declare to fish in. History reviewed again. Sagadahoc is not a traditional fishing area. Zone F doesn't get anything in this as a compromise. This only impacts federal permit holders.

Audience: Bret Gilliam, Zone E disagreed with the discussion about who fished where and when and pointed out that Sagadahoc is already in Zone E. We conserve to have something to go into

the winter with. Arthur Pierce Jr.: History review. We asked for zero growth years ago and is where the problem started. The zone lines were not originally meant to keep fishermen out. Zone F has a larger trap limit, we don't cut persons traps off, instead we built more traps that escalated to trap limits instead of limiting people like we asked. Comm. Lapointe: However, they are hard boundaries now and this is the system we have. It is limited but not closed. We've attempted to find resolution after many meetings and have found there are fundamentally different concerns. Col. Fessenden: Originally they were voting lines then with limited-entry they became hard lines and the guys living on a line have to make business decisions. There are provisions in the law that allows fishermen to change what zones they may fish.

***Motion: (C. Pendleton, D. Pecci) Motion to approve.***

*Discussion: K. Porter: Are there a lot of Zone F traps in that area of Sagadahoc? S. Train: Zone E fishermen may cross; Zone F fishermen may not due to the differential trap limits. Audience: NH fishermen can fish 800 outside of the 3-mile limit for example 800 traps off Cutler. Comm. Lapointe: These are Maine regulations not federal rules. Audience: Small Point Harbor is in Zone F and when they come out of the Harbor it is only 1/4<sup>th</sup> of a mile strip, so we're not asking for a lot, just the back side of Hermit Island; we make our fishing in the fall, they get the shedders.*

***Motion continued: Affirmative votes: C. Pendleton, D. Pecci, L. Howell, K. Porter; Non-affirmative votes: B. Sutter, E. Sheehan, A. Jordan, and Vice Chair S. Train. The council voted not to approve the proposed boundary change rulemaking in Chapter 25.94(2)(e) & (f).***

#### **Chapter 25.96 Lobster Apprentice Program**

*Discussion: T. Stockwell gave a brief review of the history behind this rulemaking. K. Porter: This is good, a lot of guys use this, and it is worthwhile.*

***Motion: (C. Pendleton, E. Sheehan) Motion to approve. Unanimous. The council voted to approve the rulemaking in Chapter 25.96, Lobster Apprentice Program.***

#### **Chapter 26.15(2)(G) Sea Urchin, Limited Entry Procedures, date of license lottery**

***Motion: (B. Sutter, K. Porter) Motion to approve. Unanimous. The council voted to approve the rulemaking in Chapter 26.15(2)(G) Sea Urchin, Limited Entry Procedures, date of license lottery.***

### **6. Special Licenses**

#### **Julia Herod, Heritage Salmon, Eastport**

The special license was requested to be allowed to take six scallops and six Pollock annually from aquaculture lease sites, when there are fish present on the sites, for testing purposes in compliance with a consent decree on the sites that they manage. The presentation was followed by with a brief discussion and questions. Also see handout.

***Motion: (C. Pendleton, A. Jordan) Motion to approve. Unanimous. The council voted to approve the special license request for Heritage Salmon.***

#### **Aaron Corr, Gulf of Maine, Inc., Pembroke, biological specimen supplier**

Aaron Corr and Tim Sheehan presented the special license request to be exempt from the purchase of two licenses, Urchin Buyer and the Shellfish Sanitation Certificate for a period of 3

years; and permission to hand collect 400-1,000 legal size urchins out of season (approximately 2 totes per year). No ground fish exemptions are requested. Also see handout.

Discussion: Col. Fessenden explained that the DMR laws are not set up for the marine specimen business. He is contacted for this occasionally for science, education and business. Marine Patrol is asked to accommodate these types of requests. This company is buying at least half of the licenses and is meeting us halfway. We may need to have a new category of license in the future.

D. Pecci: What you are requesting is no different from my work as a fishing guide and I do not request a break.

T. Sheehan: There are other for profit businesses that do receive breaks and we're only trying to ensure the success in our business.

E. Sheehan: Coastal Enterprises Inc is a supporter of this company. They see it as an appropriate way to use marine resources; our existing laws do not account for this type of educational purpose.

L. Howell: Agree with E. Sheehan; we need to check if the model ordinance allows for this type of exemption, Maine does not have a dual program.

B. Sutter: The current urchin season runs from September – April; urchins are available for sale then. Under the license structure you can purchase urchins during this period while they are available to you and therefore we should not allow the exemption.

K. Porter: Are non-harvesters required to sell to dealers?

Col. Fessenden: No.

A. Jordan: I agree with B. Sutter, why not use by-catch instead?

A. Corr: We have no problem buying them in season; the problem is the availability of live urchins out of season. The equivalent amount would be about 100-300 pounds (per year).

Comm. Lapointe: Following up on E. Sheehan's comments and growing infrastructure, eco-tourism is an example of an impact and we have pending legislation on this. We have to watch this type of thing to insure it does not spiral out of control, but we are not there yet. Under pending legislation we will be discussing a demonstration license next week.

L. Howell: We should foster this type of request.

B. Sutter: It is ok to increase economic activity but I have a problem with the collection of urchins out of season.

Comm. Lapointe: Could you hold them in tanks out of season instead?

C. Pendleton: In the long term this is like allowing SL's for hauling lobsters on Sunday. When it is a "for profit" company this is setting a precedent when they should get the license. We have no standards to follow.

C. Ames joined the meeting.

***Motion: (C. Pendleton, E. Sheehan) Motion to approve L. Howell's request for a legal review with the Assistant Attorney General on the exemption from 12 MRSA §6856.***

Discussion: S. Train: I have a problem (with their request to take urchins out of season.

Comm. Lapointe: Are you willing to use a tank this year?

A. Corr indicated that he could do this.

***Motion continued: C. Pendleton amended the motion that they use tanks this year to hold urchins purchased in season, no collecting exemption will be allowed, only the exemption(s) for possession out of season.***

Discussion: C. Ames: Who typically receives these?

A. Corr: Mostly teachers, an example would be a teacher in Ohio who it is shipped to, uses a short time then returns or composts the live specimens.

D. Pecci: However, a guide is not allowed to hold striped bass year round to use for guiding.

Comm. Lapointe: WE do allow Atlantic salmon to be held/raised in schools in tanks and we don't ask for testing etc when the fish are released due to the minor nature of the impact.

***Motion continued: Unanimous. The council voted to approve the special license request for Gulf of Maine, Inc. as amended.***

## **2. Approval of minutes (February 12, 2003)**

***Motion: (C. Pendleton, D. Pecci) Motion to approve the minutes of the February 12, 2003 meeting as written.***

Discussion: Correct the spelling of Great Eastern Mussel on page one. Correct 60,000 MT herring component to 6,000 MT early quota in section 4.

B. Sutter: Blair's comments on voting are technically wrong and the minutes should reflect the policy use of Robert's Rule's of Order.

S. Train: Blair's comments were his personal views.

K.

Porter: Abstentions are no's. [L. Churchill: Clarification - The governing statute is: 12 MRSA §6024(4) Council Actions, "An affirmative vote of a majority of the members present at a meeting or polled shall be required for any action. No action may be considered unless a quorum is present or, if there is no meeting, a quorum responds to a written poll." Pursuant to this law there are "affirmative votes" and therefore by default non-affirmative votes. Non-affirmative votes would therefore include both negative votes and abstentions. This has been confirmed with the Attorney General's office. No changes have been made per Bill Sutter's request to "correct" Blair Pyne's comments that refer to this statute, not to Robert's Rules of Order. To meet the discussion request a footnote has been added to Blair's comments to see Bill's opinion on this matter contained in these minutes.]

***Motion continued: Unanimous. The council voted to approve the minutes of the February 12, 2003 meeting with the corrections discussed.***

***Motion: (E. Sheehan, A. Jordan) Motion to adjourn the meeting. Unanimous.***